



U.S. ENVIRONMENTAL PROTECTION AGENCY
1445 ROSS AVE., SUITE 1200
DALLAS, TX 75202-2733

**West Chemical & Fertilizer Co.
West, TX
PROPOSED PENALTY WORKSHEET**

$$\text{\$2,300.00} = \text{\$5,750.00}(0.4)$$

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program Inspections Findings, Alleged Violations and Proposed Penalty Sheet.

The Size-Threshold Quantity multiplier is a factor that considers the size of the facility and the amount of regulated chemicals at the facility.

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Total Penalty and the Size/Threshold Quantity multiplier.

Example:

XYZ Facility has 24 employees and 7 times the threshold amount for the particular chemical in question. After adding the penalty numbers in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet an unadjusted penalty of \$4700 is derived.

Calculation of Adjusted Penalty

1st Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 21-50 employees and the row for 5- 10 times the threshold quantity amount gives a multiplier factor of 0.4. Therefore, the multiplier for XYZ Facility = 0.4.

2nd Use the Adjusted Penalty formula

Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.4 (Size-Threshold Multiplier)

Adjusted Penalty = \$1880

3rd An Adjusted Penalty of \$1880 would be assessed to XYZ Facility for Violations found during the RMP Compliance Inspection. This amount will be found in the Complaint and Expedited Settlement Agreement (ESA)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

CERTIFIED MAIL, RETURN RECEIPT REQUEST

Certified Receipt # XXXXXXX

Mr. Ted Uptmore
General Manager
West Chemical & Fertilizer Co.
PO Box 399
West, TX 76691

Re: Expedited Settlement Agreement (ESA) for Risk Management Plan Inspection Findings,
Alleged Violations and Proposed Penalty
Docket No. 06-2006-3582

Dear Mr. Uptmore:

The United States Environmental Protection Agency (EPA) has authority under Section 113 of the Clean Air Act (the Act) to pursue civil penalties for violations of the Section 112(r)(7) Risk Management Program (RMP) regulations found at 40 C.F.R. Part 68. Enclosed is an Expedited Settlement Agreement (ESA) that addresses RMP violations discovered at West Chemical & Fertilizer Co., West, TX (Respondent), as documented in the enclosed Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet (FORM).

EPA encourages an expeditious settlement of easily correctable violations such as the violations cited in the enclosed ESA. The ESA complies with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits: Final Rule, 40 C.F.R. Part 22 (2002).

You may resolve the cited violations by mailing a check for the penalty as set out below, signing and returning the original ESA within 45 days of your receipt of this letter. EPA, at its discretion, may grant one 45-day extension for cause upon request. Please be advised that the ESA contains a discounted, non-negotiable penalty amount, which is lower than the amount that would be derived from EPA's Combined Enforcement Policy for Section 112(r) of the Clean Air Act.

The ESA, when executed by both parties, is binding on EPA and you. Upon receipt of the signed document, EPA will take no further action against you for the violations cited in the ESA. EPA will neither accept nor approve the ESA if returned more than 45 days after the date of your receipt of this letter, unless an extension has been granted by EPA.

If you do not pay the penalty and return the ESA within 45 days of receipt, the ESA will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violations. If you decide not to sign and return the ESA and pay the penalty, EPA can pursue other enforcement measures to correct the violation(s) and seek penalties of up to \$32,500 per violation per day.

You are required in the ESA to certify that you have corrected the violation(s) and paid the penalty. The payment for the penalty amount must be in the form of a certified check payable to the "Treasurer, United States of America", with the Docket Number of the ESA on the check. The Docket Number is located at the top of the left column of the ESA.

Payment of the penalty amount shall be sent via certified mail to:

U.S. EPA Region 6
Regional Hearing Clerk (RC-HO)
P.O. Box 371099M
Pittsburgh, PA 15251

The signed original ESA with a copy of the certified check shall be sent via certified mail to:

U.S. EPA Region 6
Elizabeth R. Rogers (6SF-RC)
1445 Ross Avenue
Dallas, Texas 75202-2733

When signing the ESA, please indicate, in the appropriate space, the cost of all actions taken to correct the alleged violations.

By terms of the ESA, and upon EPA=s receipt of the signed ESA, you waive your opportunity for a hearing pursuant to Section 113 of the CAA. EPA will treat any response to the ESA, other than acceptance of the settlement offer, as an indication that the recipient is not interested in pursuing this expedited settlement procedure.

If you have any questions relating to this ESA, please contact Bob Goodfellow at 214.665.6632 or by e-mail at goodfellow.bob@epa.gov.

Sincerely yours,

James L. Graham Jr., P.E.
Enforcement Coordinator

Enclosures (3)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO: 06-2006-3582

This complaint is issued to: West Chemical & Fertilizer Co.

At: 1471 Jerry Mashek Drive, West, TX

for violating Section 112(r)(7) of the Clean Air Act.

This Expedited Settlement Agreement (ESA) is being entered into by the United States Environmental Protection Agency (EPA), Region 6, by its duly delegated official, the Director, Superfund Division, and by Respondent pursuant to Section 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On August 13, 2003, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

On March 16, 2006, an authorized representative of the EPA conducted a compliance inspection of the subject facility (Respondent) to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Act. EPA found that the Respondent had violated regulations implementing Section 112(r) of the Act by failing to comply with the regulations as noted on the attached RISK MANAGEMENT PLAN INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY SHEET ("FORM"), which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history, its good faith effort to comply, and other factors as justice may require, and upon consideration of the entire record the parties enter into the ESA in order to settle the violations, described in the attached FORM for the total penalty amount of **\$2,300.00**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein, and consents to the assessment of the penalty as stated above. Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed in the attached FORM and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of **\$2,300.00** in payment of the full penalty amount to the following address:

U.S. EPA Region 6
Regional Hearing Clerk (RC-HO)
P.O. Box 371099M
Pittsburgh, PA 15251

The DOCKET NUMBER OF THIS EXPEDITED SETTLEMENT AGREEMENT must be included on the certified check. (The DOCKET NUMBER is located at the top left corner of this Expedited Settlement Agreement.)

This original Settlement Agreement and a copy of the certified check must be sent by certified mail to:

112(r) Enforcement Coordinator
Superfund Division (6SF-RO)
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Upon the Respondent=s signing and submission of this Settlement Agreement, EPA will take no further action against the Respondent for the alleged violations of the Clean Air Act described in the above Form. EPA does not waive any enforcement action by EPA for any other past, present, or future violations under the Clean Air Act or any other statute.

If the Settlement Agreement with an attached copy of the certified check is not returned to the EPA Region 6 office at the above address in correct form by the Respondent within 45 days of the date of the receipt of this Settlement Agreement, the Complaint and Expedited Settlement Agreement is withdrawn, without prejudice to EPA's ability to file additional enforcement actions for the violations identified in this Settlement Agreement.

Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this complaint pursuant to 40 CFR ' 22.14. Upon signing and returning of this Settlement Agreement to EPA, the Respondent waives the opportunity for a hearing pursuant to Section 113(d)(2)(A) of the Clean Air Act, 42 U.S.C. ' 7413(d)(2)(A).

This Settlement Agreement is binding on the EPA and the Respondent signing below. By signing below, the Respondent waives any objections to EPA's jurisdiction with respect to the Settlement Agreement and consents to EPA's approval of this Settlement Agreement without further notice. This Settlement Agreement is effective upon the Regional Administrator=s signature.

Samuel Coleman, P. E.
Director
Superfund Division

Date: _____

It is so ORDERED. This Order shall become effective upon filing of the fully executed Complaint and Expedited Settlement Agreement.

Richard E. Greene
Regional Administrator

Date: _____

SIGNATURE BY RESPONDENT:

Signature: _____

Date: _____

Name (print): _____

Title (print): _____

Cost of Corrective Actions: _____